IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2345 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PADMANABH BHOGILAL & 4 - Appellant(s)

Versus

CHARITY COMMISSOINER - Defendant(s)

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Appearance :

MR.VAIDYA, FOR MR J.C. VYAS for Appellant(s):1-2, 5,DELETED for Appellant(s) : 3 - 4.
MR.R.M.CHAUHAN, ASST.GOVERNMENT PLEADER for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 19/01/2006

ORAL JUDGMENT

Heard, learned Advocate, Mr.Vaidya for Mr.J.C.Vyas, for the appellants No.1, 2 and 5 (No.3 and 4 have been deleted) and learned Asst. Government Pleader, Mr.R.M.Chauhan, for the respondent.

2.This appeal arises out of an order passed by learned Civil Judge in Civil Misc. Application No.76 of 1986 below Exh.1 on 5th December, 1985 granting following reliefs.

> *"... Rule absolute. The petitioners Trustees are permitted to utilize the surplus amount of the Trust Corpus for the purpose of giving donation of Rs.10,00,000/- ten lacs to Ahmedabad Education Society for the purpose of construction of English-medium School Building, in memory of completion of Century of the Trust, and, the earlier orders granted by this Court as referred to in para (b) of prayer clause (l), shall stand modified to that extent. The costs of the petition, including that of the Charity Commissioner shall come out of the Estate..."*

3.The said application was preferred by the appellants making following prayers.

> *"14 A) That the Hon'ble Court will be pleased to grant direction to the petitioners to spend the surplus amount and other accumulated amount for the objects mentioned in para 6 of this Application.*
>
> *B) That the Hon'ble Court will be pleased to modify the direction issued by it earlier so as to delete the requirement of spending the surplus amount of each year in the next following year and also the direction to spend 25% of the surplus for each of the 4 purposes.*
>
> *C) That the Hon'ble Court be pleased to grant*

permission to the petitioners to spend the amount of Rs.10 Lacs by giving donation to the Ahmedabad Education Society on the occasion of completion of 100 years of the Trust for the purpose of establishing an English Medium School and for the purposes of constructing a building for such school as per the resolution passed by the Trustees on 28th September, 1984.

D) That the costs of this application be awarded.

E) That any other relief that the Hon'ble Court deem fit in the facts and circumstances of the case may please be granted.

F) That the notice of the application be issued to the office of the Charity Commissioner, Mirzapur, Ahmedabad."

4.Learned Advocate, Mr.Vaidya, submitted that the impugned order is passed in terms of paragraph No.14 (C) of the prayers made in the application and partly granting modification to the extent required for compliance of paragraph No.14(B) as prayed for in paragraph No.14(C) of the application. He, submitted that the lower Court has not considered or dealt with the questions relating to prayers made in paragraph No.14(A) and 14(B), in the form it is prayed for, and therefore, the appeal.

4.1Mr.Vaidya, submitted that the appeal may be allowed and the reliefs not granted by the lower Court may be

granted, or in the alternative, the matter may be remanded to the lower Court for considering these prayers.

5. Learned Asst. Government Pleader, Mr.Chauhan, appears for the respondent concedes the situation and rightly so. The lower Court has not examined the aspects of the case relating to prayer No.14(A) and 14(B) in its form, and therefore, it would be necessary to examine the case on consideration of relevant material whether the relief prayed for in paragraph No.14(A) and 14(B) can be granted as it is. This aspect can be considered by the Court below, as relevant material for consideration of these issues will have to be examined. This Court is, therefore, of the view that the appeal deserves to be allowed only to that extent, without disturbing the operative part of the order to the extent of which the application is granted. The lower Court shall examine the case of the appellants-applicants for relief prayed in paragraph No.14(A) and 14(B) in the form it is made (blanket permission). The appeal, therefore, is disposed of with said directions to the trial Court, with no order as to costs.

(A.L.DAVE, J.)

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